

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.L.P..No. 629 of 2006()

CC.235/1997 of JUDICIAL FIRST CLASS MAGISTRATE COURT -II,
KANJIRAPPALLY
.....

PETITIONER/COMPLAINANT:

K.RAMACHANDRAN NAIR,
NJALIMAKKAL, CHEKKETHU KAVALA,
CHIRAKKADAVU REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER, INDIRA DEVI.P.R.

BY ADV. SRI.LIJL.J.VADAKEDOM

RESPONDENTS: ACCUSED AND STATE

1. CHANDRASEKHARAN NAIR,
(DRIVER), PAMPADY BLOCK OFFICE,
ANIKKADU P.O.
2. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.GOPALAKRISHNA KURUP-R1
SRI.MANU.S.
PUBLIC PROSECUTOR SRI. M.S.BREEZE -R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 629 OF 2006

Dated this the 7th day of March, 2007

ORDER

This is a petition for leave to appeal against the judgment in C.C. No.235 of 1997 on the file of the Judicial First Class Magistrate's Court II, Kanjirappally.

2. The allegation in the compliant was that Ext.P1 cheque for an amount of Rs.1,00,000/- issued by the first respondent - accused in favour of the petitioner - complainant towards discharge of a liability when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. After complying with the statutory provisions, the petitioner filed the complaint. To prove the case against the first respondent, the complainant himself was examined as PW.1 and Exts.P1 to P7(d) were produced. On the side of the defence, DW.1 was examined and Ext.D1 was produced. On closing the evidence of the complainant, the court below, heard the first respondent under Section 313 Cr.P.C. Denying the allegations in the

complaint, the first respondent stated that he had issued a cheque in favour of the petitioner - complainant for an amount of Rs.10,000/- which he had borrowed from the petitioner and the amount has already been paid. He further stated that he had written the amount in the cheque only in figures and that the first respondent misused the cheque by altering the amount in figures to Rs.1,00,000/- and also by writing the amount in words. To prove his case, the first respondent relied on Ext.D1 report of the handwriting expert which showed that there was difference in the writings in Ext.P1 cheque. Hence, it is clear that the amount in the cheque in question was altered by the complainant.

3. Section 87 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”) says that if a negotiable instrument is materially altered, it cannot be considered as a negotiable instrument for which any liability can be attached. The court below found that the petitioner - complainant could not prove a case against the first respondent under Section 138 of the Act.

4. Learned counsel appearing for the petitioner submits that on the same cheque and the same issue a suit was already filed before the civil court which was decreed in favour of the petitioner. It is seen that the

evidence adduced in the said suit was not pressed into service in this case. In the facts and circumstances of the case, this Court is of the view that the findings entered by the court below require no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

